

LEGISLATURE OF NEBRASKA

ONE HUNDRED FIRST LEGISLATURE

FIRST SESSION

LEGISLATIVE BILL 504

Introduced by Langemeier, 23.

Read first time January 21, 2009

Committee: Natural Resources

A BILL

1 FOR AN ACT relating to environmental protection; to amend
2 sections 81-1505 and 81-1506, Reissue Revised Statutes of
3 Nebraska; to provide for permits for discharge of dredged
4 or fill material; to harmonize provisions; and to repeal
5 the original sections.

6 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 81-1505, Reissue Revised Statutes of
2 Nebraska, is amended to read:

3 81-1505 (1) In order to carry out the purposes of the
4 Environmental Protection Act, the Integrated Solid Waste Management
5 Act, and the Livestock Waste Management Act, the council shall
6 adopt and promulgate rules and regulations which shall set
7 standards of air, water, and land quality to be applicable to
8 the air, waters, and land of this state or portions thereof.
9 Such standards of quality shall be such as to protect the public
10 health and welfare. The council shall classify air, water, and land
11 contaminant sources according to levels and types of discharges,
12 emissions, and other characteristics which relate to air, water,
13 and land pollution and may require reporting for any such class or
14 classes. Such classifications and standards made pursuant to this
15 section may be made for application to the state as a whole or to
16 any designated area of the state and shall be made with special
17 reference to effects on health, economic and social factors, and
18 physical effects on property. Such standards and classifications
19 may be amended as determined necessary by the council.

20 (2) In adopting the classifications of waters and water
21 quality standards, the primary purpose for such classifications and
22 standards shall be to protect the public health and welfare and the
23 council shall give consideration to:

24 (a) The size, depth, surface area, or underground area
25 covered, the volume, direction, and rate of flow, stream gradient,

1 and temperature of the water;

2 (b) The character of the area affected by such
3 classification or standards, its peculiar suitability for
4 particular purposes, conserving the value of the area, and
5 encouraging the most appropriate use of lands within such area for
6 domestic, agricultural, industrial, recreational, and aquatic life
7 purposes;

8 (c) The uses which have been made, are being made, or are
9 likely to be made, of such waters for agricultural, transportation,
10 domestic, and industrial consumption, for fishing and aquatic
11 culture, for the disposal of sewage, industrial waste, and other
12 wastes, or other uses within this state and, at the discretion of
13 the council, any such uses in another state on interstate waters
14 flowing through or originating in this state;

15 (d) The extent of present pollution or contamination
16 of such waters which has already occurred or resulted from past
17 discharges therein; and

18 (e) Procedures pursuant to section 401 of the Clean Water
19 Act, 33 U.S.C. 1251 et seq., for certification by the department of
20 activities requiring a federal license or permit which may result
21 in a discharge.

22 (3) In adopting effluent limitations or prohibitions, the
23 council shall give consideration to the type, class, or category
24 of discharges and the quantities, rates, and concentrations of
25 chemical, physical, biological, and other constituents which are

1 discharged from point sources into navigable or other waters of the
2 state, including schedules of compliance, best practicable control
3 technology, and best available control technology.

4 (4) In adopting standards of performance, the council
5 shall give consideration to the discharge of pollutants which
6 reflect the greatest degree of effluent reduction which the
7 council determines to be achievable through application of the best
8 available demonstrated control technology, processes, operating
9 methods, or other alternatives, including, when practicable, a
10 standard permitting no discharge of pollutants.

11 (5) In adopting toxic pollutant standards and
12 limitations, the council shall give consideration to the
13 combinations of pollutants, the toxicity of the pollutant, its
14 persistence, degradability, the usual or potential presence of the
15 affected organisms in any waters, the importance of the affected
16 organisms, and the nature and extent of the effect of the toxic
17 pollutant on such organisms.

18 (6) In adopting pretreatment standards, the council
19 shall give consideration to the prohibitions or limitations to
20 noncompatible pollutants, prohibitions against the passage through
21 a publicly owned treatment works of pollutants which would cause
22 interference with or obstruction to the operation of publicly owned
23 treatment works, damage to such works, and the prevention of the
24 discharge of pollutants therefrom which are inadequately treated.

25 (7) In adopting treatment standards, the council shall

1 give consideration to providing for processes to which wastewater
2 shall be subjected in a publicly owned wastewater treatment works
3 in order to make such wastewater suitable for subsequent use.

4 (8) In adopting regulations pertaining to the disposal
5 of domestic and industrial liquid wastes, the council shall
6 give consideration to the minimum amount of biochemical oxygen
7 demand, suspended solids, or equivalent in the case of industrial
8 wastewaters, which must be removed from the wastewaters and the
9 degree of disinfection necessary to meet water quality standards
10 with respect to construction, installation, change of, alterations
11 in, or additions to any wastewater treatment works or disposal
12 systems, including issuance of permits and proper abandonment,
13 and requirements necessary for proper operation and maintenance
14 thereof.

15 (9) (a) The council shall adopt and promulgate rules and
16 regulations for controlling mineral exploration holes and mineral
17 production and injection wells. The rules and regulations shall
18 include standards for the construction, operation, and abandonment
19 of such holes and wells. The standards shall protect the public
20 health and welfare and air, land, water, and subsurface resources
21 so as to control, minimize, and eliminate hazards to humans,
22 animals, and the environment. Consideration shall be given to:

23 (i) Area conditions such as suitability of location,
24 geologic formations, topography, industry, agriculture, population
25 density, wildlife, fish and other aquatic life, sites of

1 archeological and historical importance, mineral, land, and water
2 resources, and the existing economic activities of the area
3 including, but not limited to, agriculture, recreation, tourism,
4 and industry;

5 (ii) A site-specific evaluation of the geologic and
6 hydrologic suitability of the site and the injection, disposal, and
7 production zones;

8 (iii) The quality of the existing ground water, the
9 effects of exemption of the aquifer from any existing water quality
10 standards, and requirements for restoration of the aquifer;

11 (iv) Standards for design and use of production
12 facilities, which shall include, but not be limited to, all wells,
13 pumping equipment, surface structures, and associated land required
14 for operation of injection or production wells; and

15 (v) Conditions required for closure, abandonment, or
16 restoration of mineral exploration holes, injection and production
17 wells, and production facilities in order to protect the public
18 health and welfare and air, land, water, and subsurface resources.

19 (b) The council shall establish fees for regulated
20 activities and facilities and for permits for such activities
21 and facilities. The fees shall be sufficient but shall not exceed
22 the amount necessary to pay the department for the direct and
23 indirect costs of evaluating, processing, and monitoring during and
24 after operation of regulated facilities or performance of regulated
25 activities.

1 (c) With respect to mineral production wells, the council
2 shall adopt and promulgate rules and regulations which require
3 restoration of air, land, water, and subsurface resources and
4 require mineral production well permit applications to include a
5 restoration plan for the air, land, water, and subsurface resources
6 affected. Such rules and regulations may provide for issuance of a
7 research and development permit which authorizes construction and
8 operation of a pilot plant by the permittee for the purpose of
9 demonstrating the permittee's ability to inject and restore in a
10 manner which meets the standards required by this subsection and
11 the rules and regulations.

12 The rules and regulations adopted and promulgated may
13 also provide for issuance of a commercial permit after a finding
14 by the department that the injection and restoration procedures
15 authorized by the research and development permit have been
16 successful in demonstrating the applicant's ability to inject
17 and restore in a manner which meets the standards required by this
18 subsection and the rules and regulations.

19 (d) For the purpose of this subsection, unless the
20 context otherwise requires, restoration shall mean the employment,
21 during and after an activity, of procedures reasonably designed to
22 control, minimize, and eliminate hazards to humans, animals, and
23 the environment, to protect the public health and welfare and air,
24 land, water, and subsurface resources, and to return each resource
25 to a quality of use consistent with the uses for which the resource

1 was suitable prior to the activity.

2 (10) In adopting livestock waste control regulations,
3 the council shall consider the discharge of livestock wastes into
4 the waters of the state or onto land not owned by the livestock
5 operator, conditions under which permits for such operations may be
6 issued, including design, location, and proper management of such
7 facilities, protection of ground water from such operations, and
8 revocation, modification, or suspension of such permits for cause
9 and all requirements of the Livestock Waste Management Act.

10 (11) In adopting regulations for the issuance of permits
11 under the National Pollutant Discharge Elimination System created
12 by the Clean Water Act, 33 U.S.C. 1251 et seq., the council
13 shall consider when such permits shall be required and exemptions,
14 application and filing requirements, terms and conditions affecting
15 such permits, notice and public participation, duration and review
16 of such permits, and monitoring, recording, and reporting under the
17 system.

18 (12) The council shall adopt and promulgate rules and
19 regulations for air pollution control which shall include:

20 (a) A construction permit program which requires the
21 owner or operator of an air contaminant source to obtain a permit
22 prior to construction. Application fees shall be according to
23 section 81-1505.06;

24 (b) An operating permit program consistent with
25 requirements of the Clean Air Act, 42 U.S.C. 7401 et seq., and an

1 operating permit program for minor sources of air pollution, which
2 programs shall require permits for both new and existing sources;

3 (c) Provisions for operating permits to be issued after
4 public notice, to be terminated, modified, or revoked for cause,
5 and to be modified to incorporate new requirements;

6 (d) Provisions for applications to be on forms provided
7 by the department and to contain information necessary to make a
8 determination on the appropriateness of issuance or denial. The
9 department shall make a completeness determination in a timely
10 fashion and after such determination shall act on the application
11 within time limits set by the council. Applications for operating
12 permits shall include provisions for certification of compliance by
13 the applicant;

14 (e) Requirements for operating permits which may include
15 such conditions as necessary to protect public health and welfare,
16 including, but not limited to (i) monitoring and reporting
17 requirements on all sources subject to the permit, (ii) payment of
18 annual fees sufficient to pay the reasonable direct and indirect
19 costs of developing and administering the air quality permit
20 program, (iii) retention of records, (iv) compliance with all air
21 quality standards, (v) a permit term of no more than five years
22 from date of issuance, (vi) any applicable schedule of compliance
23 leading to compliance with air quality regulations, (vii) site
24 access to the department for inspection of the facility and
25 records, (viii) emission limits or control technology requirements,

1 (ix) periodic compliance certification, and (x) other conditions
2 necessary to carry out the purposes of the Environmental Protection
3 Act. For purposes of this subsection, control technology shall mean
4 a design, equipment, a work practice, an operational standard which
5 may include a requirement for operator training or certification,
6 or any combination thereof;

7 (f) Classification of air quality control regions;

8 (g) Standards for air quality that may be established
9 based upon protection of public health and welfare, emission
10 limitations established by the United States Environmental
11 Protection Agency, and maximum achievable control technology
12 standards for sources of toxic air pollutants. For purposes of
13 this subdivision, maximum achievable control technology standards
14 shall mean an emission limit or control technology standard which
15 requires the maximum degree of emission reduction that the council,
16 taking into consideration the cost of achieving such emission
17 reduction, any health and environmental impacts not related to
18 air quality, and energy requirements, determines is achievable for
19 new or existing sources in the category or subcategory to which
20 the standard applies through application of measures, processes,
21 methods, systems, or techniques, including, but not limited to,
22 measures which accomplish one or a combination of the following:

23 (i) Reduce the volume of or eliminate emissions of the
24 pollutants through process changes, substitution of materials, or
25 other modifications;

1 (ii) Enclose systems or processes to eliminate emissions;

2 or

3 (iii) Collect, capture, or treat the pollutants when
4 released from a process, stack, storage, or fugitive emission
5 point;

6 (h) Restrictions on open burning and fugitive emissions;

7 (i) Provisions for issuance of general operating permits,
8 after public notice, for sources with similar operating conditions
9 and for revoking such general authority to specific permittees;

10 (j) Provisions for implementation of any emissions
11 trading programs as defined by the department. Such programs shall
12 be consistent with the Clean Air Act, 42 U.S.C. 7401 et seq., and
13 administered through the operating permit program;

14 (k) A provision that operating permits will not be issued
15 if the Environmental Protection Agency objects in a timely manner;

16 (l) Provisions for periodic reporting of emissions;

17 (m) Limitations on emissions from process operations,
18 fuel-burning equipment, and incinerator emissions and such other
19 restrictions on emissions as are necessary to protect the public
20 health and welfare;

21 (n) Time schedules for compliance;

22 (o) Requirements for owner or operator testing and
23 monitoring of emissions;

24 (p) Control technology requirements when it is not
25 feasible to prescribe or enforce an emission standard; and

1 (q) Procedures and definitions necessary to carry out
2 payment of the annual emission fee set in section 81-1505.04.

3 (13)(a) In adopting regulations for hazardous waste
4 management, the council shall give consideration to generation of
5 hazardous wastes, labeling practices, containers used, treatment,
6 storage, collection, transportation including a manifest system,
7 processing, resource recovery, and disposal of hazardous wastes. It
8 shall consider the permitting, licensing, design and construction,
9 and development and operational plans for hazardous waste
10 treatment, storage, and disposal facilities, and conditions for
11 licensing or permitting of hazardous waste treatment, storage, and
12 disposal areas. It shall consider modification, suspension, or
13 revocation of such licenses and permits, including requirements
14 for waste analysis, site improvements, fire prevention, safety,
15 security, restricted access, and covering and handling of hazardous
16 liquids and materials. Licenses and permits for hazardous waste,
17 treatment, storage, and disposal facilities shall not be issued
18 until certification by the State Fire Marshal as to fire prevention
19 and fire safety has been received by the department. The council
20 shall further consider the need at treatment, storage, or disposal
21 facilities for required equipment, communications and alarms,
22 personnel training, and contingency plans for any emergencies that
23 might arise and for a coordinator during such emergencies.

24 In addition the council shall give consideration to (i)
25 ground water monitoring, (ii) use and management of containers

1 and tanks, (iii) surface impoundments, (iv) waste piles, (v)
2 land treatment, (vi) incinerators, (vii) chemical or biological
3 treatment, (viii) landfills including the surveying thereof, and
4 (ix) special requirements for ignitable, reactive, or incompatible
5 wastes.

6 In considering closure and postclosure of hazardous
7 waste treatment, storage, or disposal facilities, the council
8 shall consider regulations that would result in the owner or
9 operator closing his or her facility so as to minimize the need
10 for future maintenance, and to control, minimize, or eliminate,
11 to the extent necessary to protect humans, animals, and the
12 environment, postclosure escape of hazardous waste, hazardous waste
13 constituents, and leachate to the ground water or surface waters,
14 and to control, minimize, or eliminate, to the extent necessary to
15 protect humans, animals, and the environment, waste decomposition
16 to the atmosphere. In considering corrective action for hazardous
17 waste treatment, storage, or disposal facilities, the council shall
18 consider regulations that would require the owner or operator,
19 or any previous owner or operator with actual knowledge of
20 the presence of hazardous waste at the facility, to undertake
21 corrective action or such other response measures necessary to
22 protect human health or the environment for all releases of
23 hazardous waste or hazardous constituents from any treatment,
24 storage, or disposal facility or any solid waste management unit at
25 such facility regardless of the time at which waste was placed in

1 such unit.

2 Such regulations adopted pursuant to this subsection
3 shall in all respects comply with the Environmental Protection Act
4 and the Resource Conservation and Recovery Act, 42 U.S.C. 6901 et
5 seq.

6 (b) In adopting regulations for hazardous waste
7 management, the council shall consider, in addition to criteria
8 in subdivision (a) of this subsection, establishing criteria for
9 (i) identifying hazardous waste including extraction procedures,
10 toxicity, persistence, and degradability in nature, potential
11 for accumulation in tissue, flammability or ignitability,
12 corrosiveness, reactivity, and generation of pressure through
13 decomposition, heat, or other means, and other hazardous
14 characteristics, (ii) listing all materials it deems hazardous
15 and which should be subject to regulation, and (iii) locating
16 treatment, storage, or disposal facilities for such wastes. In
17 adopting criteria for flammability and ignitability of wastes
18 pursuant to subdivision (b)(i) of this subsection, no regulation
19 shall be adopted without the approval of the State Fire Marshal.

20 (c) In adopting regulations for hazardous waste
21 management, the council shall establish a schedule of fees to be
22 paid to the director by licensees or permittees operating hazardous
23 waste processing facilities or disposal areas on the basis of a
24 monetary value per cubic foot or per pound of the hazardous wastes,
25 sufficient but not exceeding the amount necessary to reimburse

1 the department for the costs of monitoring such facilities or
2 areas during and after operation of such facilities or areas. The
3 licensees may assess a cost against persons using the facilities or
4 areas. The director shall remit any money collected from fees paid
5 to him or her to the State Treasurer who shall credit the entire
6 amount thereof to the General Fund.

7 (d) In adopting regulations for solid waste disposal,
8 the council shall consider storage, collection, transportation,
9 processing, resource recovery, and disposal of solid waste,
10 developmental and operational plans for solid waste disposal
11 areas, conditions for permitting of solid waste disposal
12 areas, modification, suspension, or revocation of such permits,
13 regulations of operations of disposal areas, including site
14 improvements, fire prevention, ground water protection, safety and
15 restricted access, handling of liquid and hazardous materials,
16 insect and rodent control, salvage operations, and the methods of
17 disposing of accumulations of junk outside of solid waste disposal
18 areas. Such regulations shall in all respects comply with the
19 Environmental Protection Act, the Integrated Solid Waste Management
20 Act, and the Resource Conservation and Recovery Act, 42 U.S.C. 6901
21 et seq.

22 (14) In adopting regulations governing discharges or
23 emissions of oil and other hazardous materials into the waters, in
24 the air, or upon the land of the state, the council shall consider
25 the requirements of the Integrated Solid Waste Management Act,

1 methods for prevention of such discharges or emissions, and the
2 responsibility of the discharger or emitter for cleanup, toxicity,
3 degradability, and dispersal characteristics of the substance.

4 (15) In adopting regulations governing composting and
5 composting sites, the council shall give consideration to:

6 (a) Approval of a proposed site by the local governing
7 body, including the zoning authority, if any, prior to issuance of
8 a permit by the department;

9 (b) Issuance of permits by the department for such
10 composting operations, with conditions if necessary;

11 (c) Submission of construction and operational plans by
12 the applicant for a permit to the department, with approval of such
13 plans before issuance of such permit;

14 (d) A term of five years for such permits, which shall
15 not be transferable;

16 (e) Renewal of permits if the operation has been in
17 substantial compliance with composting regulations adopted pursuant
18 to this subsection, permit conditions, and operational plans;

19 (f) Review by the department of materials to be
20 composted, including chemical analysis when found by the department
21 to be necessary;

22 (g) Inspections of such compost sites at least
23 semiannually followed by ratings, with a copy of such ratings to
24 be given to the site management. Operations out of compliance with
25 composting regulations, permit conditions, or operational plans

1 shall be given a reasonable time for voluntary compliance, and
2 failure to do so within the specified time shall result in a
3 hearing after notice is given, at which time the owner or operator
4 shall appear and show cause why his or her permit should not be
5 revoked;

6 (h) Special permits of the department for demonstration
7 projects not to exceed six months;

8 (i) Exemptions from permits of the department; and

9 (j) The Integrated Solid Waste Management Act.

10 (16) Any person operating or responsible for the
11 operation of air, water, or land contaminant sources of any
12 class for which the rules and regulations of the council require
13 reporting shall make reports containing information as may be
14 required by the department concerning quality and quantity of
15 discharges and emissions, location, size, and height of contaminant
16 outlets, processes employed, fuels used, and the nature and time
17 periods or duration of discharges and emissions, and such other
18 information as is relevant to air, water, or land pollution and
19 is available.

20 (17) Prior to adopting, amending, or repealing standards
21 and classifications of air, water, and land quality and rules
22 and regulations under the Integrated Solid Waste Management Act
23 or the Livestock Waste Management Act, the council shall, after
24 due notice, conduct public hearings thereon. Notice of public
25 hearings shall specify the waters or the area of the state for

1 which standards of air, water, or land are sought to be adopted,
2 amended, or repealed and the time, date, and place of such hearing.
3 Such hearing shall be held in the general area to be affected by
4 such standards. Such notice shall be given in accordance with the
5 Administrative Procedure Act.

6 (18) Standards of quality of the air, water, or land of
7 the state and rules and regulations adopted under the Integrated
8 Solid Waste Management Act or the Livestock Waste Management Act or
9 any amendment or repeal of such standards or rules and regulations
10 shall become effective upon adoption by the council and filing in
11 the office of the Secretary of State. In adopting standards of
12 air, water, and land quality or making any amendment thereof, the
13 council shall specify a reasonable time for persons discharging
14 wastes into the air, water, or land of the state to comply with
15 such standards and upon the expiration of any such period of time
16 may revoke or modify any permit previously issued which authorizes
17 the discharge of wastes into the air, water, or land of this state
18 which results in reducing the quality of such air, water, or land
19 below the standards established therefor by the council.

20 (19) All standards of quality of air, water, or land and
21 all rules and regulations adopted pursuant to law by the council
22 prior to May 29, 1981, and applicable to specified air, water, or
23 land are hereby approved and adopted as standards of quality of and
24 rules and regulations for such air, water, or land.

25 (20) In addition to such standards as are heretofore

1 authorized, the council shall adopt and promulgate rules and
2 regulations to set standards of performance, effluent standards,
3 pretreatment standards, treatment standards, toxic pollutant
4 standards and limitations, effluent limitations, effluent
5 prohibitions, and quantitative limitations or concentrations which
6 shall in all respects conform with and meet the requirements of the
7 National Pollutant Discharge Elimination System in the Clean Water
8 Act, 33 U.S.C. 1251 et seq.

9 (21)(a) The council shall adopt and promulgate rules
10 and regulations requiring all new or renewal permit or license
11 applicants regulated under the Environmental Protection Act, the
12 Integrated Solid Waste Management Act, or the Livestock Waste
13 Management Act to establish proof of financial responsibility by
14 providing funds in the event of abandonment, default, or other
15 inability of the permittee or licensee to meet the requirements
16 of its permit or license or other conditions imposed by the
17 department pursuant to the acts. The council may exempt classes of
18 permittees or licensees from the requirements of this subdivision
19 when a finding is made that such exemption will not result in a
20 significant risk to the public health and welfare.

21 (b) Proof of financial responsibility shall include any
22 of the following made payable to or held in trust for the benefit
23 of the state and approved by the department:

24 (i) A surety bond executed by the applicant and a
25 corporate surety licensed to do business in this state;

1 (ii) A deposit of cash, negotiable bonds of the United
2 States or the state, negotiable certificates of deposit, or
3 an irrevocable letter of credit of any bank or other savings
4 institution organized or transacting business in the United States
5 in an amount or which has a market value equal to or greater than
6 the amount of the bonds required for the bonded area under the same
7 terms and conditions upon which surety bonds are deposited;

8 (iii) An established escrow account; or

9 (iv) A bond of the applicant without separate surety upon
10 a satisfactory demonstration to the director that such applicant
11 has the financial means sufficient to self-bond pursuant to bonding
12 requirements adopted by the council consistent with the purposes of
13 this subdivision.

14 (c) The director shall determine the amount of the bond,
15 deposit, or escrow account which shall be reasonable and sufficient
16 so the department may, if the permittee or licensee is unable
17 or unwilling to do so and in the event of forfeiture of the
18 bond or other financial responsibility methods, arrange to rectify
19 any improper management technique committed during the term of
20 the permit or license and assure the performance of duties and
21 responsibilities required by the permit or license pursuant to law,
22 rules, and regulations.

23 (d) In determining the amount of the bond or other
24 method of financial responsibility, the director shall consider the
25 requirements of the permit or license or any conditions specified

1 by the department, the probable difficulty of completing the
2 requirements of such permit, license, or conditions due to such
3 factors as topography, geology of the site, and hydrology, and the
4 prior history of environmental activities of the applicant.

5 This subsection shall apply to hazardous waste treatment,
6 storage, or disposal facilities which have received interim status.

7 (22) The council shall adopt and promulgate rules and
8 regulations no more stringent than the provisions of section 1453
9 et seq. of the federal Safe Drinking Water Act for public water
10 system source water assessment programs.

11 The council may adopt and promulgate rules and
12 regulations to implement a source water petition program no more
13 stringent than section 1454 et seq. of the federal Safe Drinking
14 Water Act.

15 (23) In adopting regulations for the issuance of permits
16 under section 404 of the Clean Water Act, as amended, 33 U.S.C.
17 1251 et seq., relating to the discharge of dredged or fill material
18 into the waters of the state, the council shall consider (a)
19 when such permits shall be required and exemptions, application,
20 and filing requirements, (b) terms and conditions affecting such
21 permits, notice and public participation, and duration, (c) review
22 of such permits, and (d) monitoring, recording, and reporting
23 requirements and such other requirements not inconsistent with the
24 Clean Water Act.

25 Sec. 2. Section 81-1506, Reissue Revised Statutes of

1 Nebraska, is amended to read:

2 81-1506 (1) It shall be unlawful for any person:

3 (a) To cause pollution of any air, waters, or land of the
4 state or to place or cause to be placed any wastes in a location
5 where they are likely to cause pollution of any air, waters, or
6 land of the state; or

7 (b) To discharge or emit any wastes into any air, waters,
8 or land of the state which reduce the quality of such air, waters,
9 or land below the air, water, or land quality standards established
10 therefor by the council. Any such action is hereby declared to be a
11 public nuisance. An animal feeding operation is not a nuisance if:

12 (i) Reasonable techniques are employed to keep dust,
13 noise, insects, and odor at a minimum;

14 (ii) It is in compliance with applicable regulations
15 adopted by the council and zoning regulations of the local
16 governing body having jurisdiction; and

17 (iii) The action is brought by or on behalf of a person
18 whose date of lawful possession of the land claimed to be affected
19 by an animal feeding operation is subsequent to the issuance of
20 an appropriate permit by the department for such operation or is
21 subsequent to the operation of the feedlot and an onsite inspection
22 by the department is made, before or after filing of the suit,
23 and the inspection reveals that no permit is required for such
24 operation.

25 (2) It shall be unlawful for any person to:

1 (a) Discharge any pollutant into waters of the state
2 without obtaining a permit as required by the National Pollutant
3 Discharge Elimination System created by the Clean Water Act, as
4 amended, 33 U.S.C. 1251 et seq., and by rules and regulations
5 adopted and promulgated pursuant to section 81-1505;

6 (b) Construct, install, modify, or operate any disposal
7 system or part thereof or any extension or addition thereto without
8 obtaining necessary permits from the department;

9 (c) Increase in volume or strength any waste in excess of
10 permitted discharges specified under any existing permit;

11 (d) Construct, install, or operate any industrial,
12 commercial, or other facility or extend, modify, or add to any such
13 facility if the operation would cause an increase in the discharge
14 or emission of wastes into the air, waters, or land of the state or
15 would otherwise cause an alteration of the physical, chemical, or
16 biological properties of any air, waters, or land of the state in a
17 manner that is not lawfully authorized; ~~or~~

18 (e) Construct or use any new outlet for the discharge or
19 emission of any wastes into the air, waters, or land of the state
20 without the necessary permit; or-

21 (f) Discharge any dredged or fill material into waters of
22 the state without obtaining a permit as required by section 404 of
23 the Clean Water Act, as amended, 33 U.S.C. 1251 et seq., and by
24 rules and regulations promulgated pursuant to section 81-1505.

25 (3) It shall be unlawful for any person to:

1 (a) Construct or operate a solid waste management
2 facility without first obtaining a permit required under the
3 Environmental Protection Act or under the Integrated Solid
4 Waste Management Act and the rules and regulations adopted and
5 promulgated by the council pursuant to the acts;

6 (b) Violate any term or condition of a solid waste
7 management facility permit;

8 (c) Violate any rule or regulation adopted and
9 promulgated by the council pursuant to the Environmental Protection
10 Act or the Integrated Solid Waste Management Act; or

11 (d) After October 1, 1993, dispose of any solid waste at
12 any location other than a solid waste management facility holding a
13 current permit issued by the department pursuant to the Integrated
14 Solid Waste Management Act.

15 (4) It shall be unlawful to:

16 (a) Construct or operate an air pollution source
17 without first obtaining a permit required under the Environmental
18 Protection Act and the rules and regulations adopted and
19 promulgated by the council pursuant to subsection (12) of section
20 81-1505;

21 (b) Violate any term or condition of an air pollution
22 permit or any emission limit set in the permit; or

23 (c) Violate any emission limit or air quality standard
24 established by the council.

25 (5) It shall be unlawful for any person to:

1 (a) Construct or operate an animal feeding operation
2 without first obtaining a permit if required under the Livestock
3 Waste Management Act or under the Environmental Protection Act and
4 the rules and regulations adopted and promulgated by the council
5 pursuant to such acts;

6 (b) Violate any provision of the Livestock Waste
7 Management Act;

8 (c) Violate any term or condition of an animal feeding
9 operation permit; or

10 (d) Violate any rule or regulation adopted and
11 promulgated by the council pursuant to the Environmental Protection
12 Act or the Livestock Waste Management Act.

13 (6) Nothing in this section shall be construed to
14 authorize the department to specify the type, design, method
15 of installation, or type of construction of any equipment of
16 manufacturing processes.

17 Sec. 3. Original sections 81-1505 and 81-1506, Reissue
18 Revised Statutes of Nebraska, are repealed.